SUBJECT INDEX

	PAGE
Argument	1
Conclusion	6
Relief prayed	6

In The

Supreme Court of the United States

OCTOBER TERM, 1961

No. 311.

SAMUEL B. FRANKLIN & CO., *Petitioner,*

vs.

SECURITIES & EXCHANGE COMMISSION, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petitioner's Reply to Brief for the Securities & Exchange Commission in Opposition.

Argument.

The N.A.S.D. and the Securities and Exchange Commission completely disregarded my presentation of the facts, that I maintained only one set of records which combined the profits made in the trading department and in the retail department and that I was trading the stocks in question and maintaining inventories in these stocks. I repeated over and over again that if I had kept separate sets of records—one for the trading department and another for the retail department and only showed the N.A.S.D. examiner the

records of the retail department all would be in order and I would not be condemned.

Many of the transactions pertained to buying and selling Western Empire Petroleum Co. shares. This stock was listed on the San Francisco Mining Exchange. My presentation of the facts and figures were completely disregarded when I stated that "At No Time Did A Client Pay Us More When He Bought or Receive Less When He Sold Than He Would Have Paid or Received if the Transactions Were Executed on the Exchange". If the stock traded on the Exchange at 3¢—we would take it in from a client at 2.7¢ (the Stock Exchange Commission was $3.00 per 1000 shares) and then sell the stock at 3.3¢ (if the stock was traded on the Exchange at 3¢). If on the same day or next day or within a few days, the stock was selling at 4¢ on the Exchange, we would charge the client 4.3¢ a share. We carried large inventories in the stock at all times. The N.A.S.D. examiner looked at our records, saw our cost was 2.7¢ and we sold at 3.3¢ that was a markup of 22%—bought at 2.7¢, sold at 4.3¢ that was a markup of 59½%. N.A.S.D. says, "That Markup is Unfair", without taking into consideration the client would pay the same price for the stock if he placed the order through a Stock Exchange Firm.

Similar transactions took place in shares of San Mauricio Mining (about 6¢) listed on the Los Angeles Stock Exchange and Mindanao (about 15¢) listed on the San Francisco Stock Exchange.

Many over-the-counter firms buy and sell listed securities in the same manner as we did.

If you will examine the Schedules 1-2 and 3 filed by the N.A.S.D. with the original complaint, you will find that the vast majority of the transactions pertained to the above stocks and stocks in which we traded and carried inventories—such as Philippine Iron Mines (about 17¢), Oklahoma Oil (about 15¢), Atles Consolidated Mining (about 50¢), Piggly Wiggly (about $1.25) and Santa Fe Western (about 1 7/8). For exampe I was trading Santa Fe Western 1 11/16 bid, 1 15/16 ask. I purchased 500 shares at 1 11/16 (as per N.A.S.D. examiner's Schedule) and later sold an odd lot of 25 shares and an odd lot of 50 shares at $2.00 a share net. The N.A.S.D. examiner looked at the cold figures saying, "The difference between 1 11/16 and 2 is a markup of 60%."

The National Association of Securities Dealers, Inc. is precluded by statute from imposing any fixed schedule of prices but it does stand steadfast on a 5 % mark-up or mark-down policy. In the N.A.S.D. Inc. News Volume XX No. 2 dated December 1960 I quote "The N.A.S.D's 5% mark-up policy is 'as pertinent and as meaningful' today as when first adopted". As an example permit me to present Complaint No. A-62 filed by the N.A.S.D. Inc. against Richard Fleischer dba Richard Fleischer Co., 1418 N. Highland, Los Angeles 28, Calif. The examiner for the N.A.S.D. checked his records for business done during the first 11 months of 1959. He was charged with 9 violations, saying 9 sales were made at mark-ups ranging from 5.1% to 8.7%. Seven of the 9 sales were stocks sold at between $2 a share and 3⅜—one was at $7.50 a share and one at 20⅝. Mr. Fleischer said he figured

to the closest ⅛th. HE WAS FINED $50 and costs of $90.89. Mr. Fleischer came to me for advice. He had worked for me as a sales representative in 1940. He asked me why he has to pay costs when each N.A.S.D. member pays yearly assessments, out of which the examiner's salaries are paid and the N.A.S.D. has enormous surpluses in their treasury. I could not answer his question. He did not want to appeal. He paid the fine and costs in February 1960.

At the N.A.S.D. hearing I was told I violated the 5% rule every time I showed a mark-up of over 5% or a markdown of over 5% whether the stocks were selling in the pennies or dollars or high-priced stocks. The Committee stated they could not have two sets of rules—one for penny stocks and another for high-priced stocks.

I maintain that the 5% mark-up and 5% mark-down rule when it pertains to penny stocks and low-priced stocks is OUTDATED, INAPPLICABLE, UNWORKABLE AND DEFINITELY UNFAIR.

The following was taken from "Wants & Offerings", a daily publication received by all investment securities firms each morning. Please note that the difference between the bid and ask prices range from 20% to 166%. These are actual prices at which these dealers will buy and sell these securities on August 7, 1961.

Name of Stock	Bid	Ask	% Diff.	Name of Firm
ABCO	1¼	1¼	40%	V. K. Osborne
Admiral Boat	⅝	⅞	40%	California Investors
Ajax Tungsten	4¢	6¢	50%	Morgan & Co.
Bakersfield Hacienda	20¢	35¢	75%	Evans MacCormack & Co.
Beacon Steel	15¢	25¢	66%	Evans MacCormack & Co.
Central Airlines	1⅞	2¼	20%	Dempsey-Tegeler & Co.
Commercial Int. Corp.	25¢	35¢	40%	Wheeler & Cruttenden, Inc.
Delta Oil of Utah	17¢	27¢	57%	Hopkins, Harbach & Co.
Dikeman	¾	1¼	66%	Holton, Henderson & Co.
Dole Engineering	⅞	1⅛	28%	Shaft, Snook & Cahn
Herts-Lion Int.	⅝	1	60%	Raymond Moore & Co.
Holloway Outdoor Adv.	1⅛	1½	30%	Pacific Coast Securities Co.
Julian Oil Royalties	75¢	1	33%	Evans MacCormack & Co.
Las Vegas Hacienda	55¢	75¢	36%	Evans MacCormack & Co.
Mio Dio	3¢	8¢	166%	Garat & Polonitza, Inc.
North Star Oil	⅝	⅞	40%	Pledger & Co.
Performer Boats	⅞	1⅛	28%	Holton, Henderson & Co. Evans MacCormack & Co.
Ranrex Mining	18¢	23¢	20%	Pledger & Co.
Standard Motels	30¢	45¢	50%	Evans MacCormack & Co.
Williston Basins Oil	09¢	13¢	44%	Wheeler & Cruttenden, Inc.

I further maintain that I carried inventories in many stocks and I should not be condemned when I buy and sell these securities exactly in the same manner as thousands of investment securities firms from coast to coast buy and sell securities.

Conclusion.

I maintain that the N.A.S.D did not have just cause to censure me, fine me $1000.00 and assess costs of $927.09.

I have been in the Investment Securities business in the City of Los Angeles for the past 37 years and sincerely feel that I have always treated my thousands of clients fairly.

In all these 37 years only two clients filed complaints against me. Both involved the question as to whether we acted "as principal" or "as agent." One involved only about $25 difference and the matter was dropped by the client after an explanation was made. In the other case the N.A.S.D. reported, after knowing all the facts, that they would engage the law firm of Gibson, Dunn & Crutcher to file "a friend of the court" brief and stating we were in the right by acting "as principal" in the sale of securities—this took place about 15 years ago.

Relief Prayed.

Based on the above presentation I pray the court for a reversal of the decision.

Respectfully submitted,

SAMUEL B. FRANKLIN,

Pro Persona for Petitioner.